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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/035,334

01/04/2002

Michael Wiedeman

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09/05/2006

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EXAMINER

BARFIELD, ANTHONY DERRELL

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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**MAILED**

SEP 05 2006

**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/035,334  
Filing Date: January 04, 2002  
Appellant(s): WIEDEMAN ET AL.

William F. Westerman  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed March 6, 2006 appealing from the Office action mailed September 15, 2005.

Art Unit: 3636

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claim 2, 6-8, 10, 12,25 and 28.

Claims 2-5, 9, 11, 13,26,27,29 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 14-24 are allowed over the prior art made of record.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

Art Unit: 3636

**(8) Evidence Relied Upon**

6,568,735

LOHR

5-2003

**(9) Grounds of Rejection**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 6-8, 10, 12, 25 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Lohr. Lohr et al. shows the use of a central pillar (11), a center support (7) extending forwardly therefrom, a lower rib (5) and an intermediate rib (5) extend laterally from the central pillar in order to respectively support a seat bottom (9) and seat back (8) thereon. Lohr et al. shows the use of a grab handle (25) on an outer edge of the seat back. There is an opening (formed by the frame (3,4) and ribs) in the seat back and seat bottom prior to the cushion being applied (see Fig, 4).

Art Unit: 3636

**(10) Response to Argument**

The following ground(s) of rejection are applicable to the appealed claims:

Appellant is reminded that claims 1, 25 and 28 are drawn to the subcombination of a seat and "central" pillar **and not the combination** of the seat, central pillar and vehicle.

Consequently, in response to appellant's arguments that **Lohr does not disclose a "central pillar"** the examiner maintains the opinion that in regards to the **intended use of applicant's invention and the claims being drawn to the subcombination**, Lohr does disclose a "central" pillar (11). Appellant is reminded that there does not have to be stated disclosure by Lohr of a central pillar but what would one of ordinary skill in the art' gleam from the disclosure of Lohr who shows a pillar with a lateral rib, which is in accordance so far as defined by the claimed invention. Furthermore, it is irrelevant whether the central pillar of Lohr is actually shown "centrally" fixed to a roof and a floor of a vehicle, as the appellant has disclosed that the claims are drawn to the subcombination of the seat only and the not the combination of the seat, pillar and vehicle.

In response to appellant's arguments that the grab handle is formed on the inside and not the *"outer edge nearest a door of the vehicle"*, and *"the seat is a front seat"*, Appellant is reminded that just because the "environment" is recited in a claimed invention does not imply the "environment" is part of the invention unless **positively stated and not functionally' stated**, which is considered to be intended use recitation. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process

Art Unit: 3636

of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). In response to appellant's argument that the grab handle has opposing ends whereby "*each end supported by one of said intermediate ends*", the examiner is of the opinion that so far as defined by the claim invention of claim 7, that the opposing ends are supported (indirectly and directly) by the intermediate ribs of Lohr as the "entire" is supported and held together by the lower, intermediate and upper (intermediate) ribs. In response to appellant's arguments that "*Lohr does not disclose a 'seat bottom directly fixed and supported by said lower rib' nor does 'Lohr does not disclose a seat back fixed to and supported by said intermediate rib'*", the examiner maintains the position that Lohr clearly shows a seat bottom "directly" fixed to a lower rib (5) and a seat back fixed to and supported by an intermediate rib, as shown in Figs. 2 and 4. Appellant is reminded that frame members (3,4) along with material (9) constitute the seat bottom while frame members (4,6) along with material (8) constitute the seat back. Consequently, both the seat bottom and seat back are "directly" fixed and supported by the lower rib (5) and intermediate rib, respectively. Appellant is relying on features, which are not positively recited i.e., fixed atop or on a top surface of the lower rib, in the case of the seat bottom and i.e., fixed atop or on a front surface of the intermediate rib for the case of the seat back. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Lohr clearly shows that the seat bottom and seat back are fixed and supported by the lower rib and intermediate rib, respectively.

Art Unit: 3636

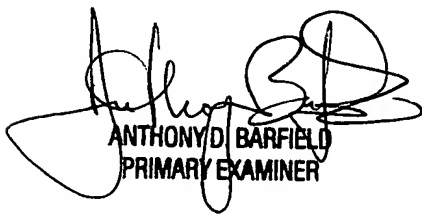
Finally, in response to appellant's arguments drawn to an opening at a central front portion and that "*Lohr does not disclose this type of seat bottom*", and "*an opening at a central top portion*", the examiner maintains the position that so far as defined by the claimed invention and as shown in Fig. 4 of Lohr, there is an opening (formed by the frame (3,4) and ribs) in the seat back and seat bottom prior to the cushion being applied thereto. Again, appellant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
ANTHONY D. BARFIELD  
PRIMARY EXAMINER

adb  
August 18, 2006

Conferees:

PC Peter M. Cuomo   
PB Peter R. Brown 